

1
2 Land Conservation and Development Commission

3
4 State Agency Coordination

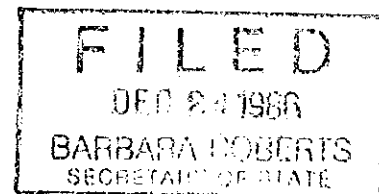
5 OAR 660, Division 30

6
7 Amendments Adopted December 18, 1986

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LEGISLATIVE COUNSEL'S
OFFICE



21 For More Information Contact

22 Department of Land Conservation and
23 Development
24 1175 Court Street, NE
25 Salem, Oregon 97310
26 (503) 378-4926

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OAR 660
DIVISION 30
REVIEW AND APPROVAL OF
STATE AGENCY COORDINATION PROGRAMS

Purpose

660-30-000 The purpose of this division is to respond to the legislative findings and policy in ORS 197.005 and 197.010. This division implements provisions in Statewide Planning Goal 2, ORS 197.040(2)(e), 197.090(1)(b) and 197.180 and explains the relationship between OAR 660, Division 30 and 660, Division 31. The purpose of Commission certification of agency coordination programs is to assure that state agency rules and programs which affect land use comply with the statewide goals and are compatible with acknowledged city and county comprehensive plans.

Definitions

660-30-005 For the purpose of this division the definitions in ORS 197.015 and the following definitions shall apply:

(1) "Acknowledged Comprehensive Plan" means a comprehensive plan and land use regulations or plan or regulation amendment which complies with the goals as provided in ORS 197.251, ORS 197.640 to 197.649 and ORS 197.625.

(2) "Rules and Programs Affecting Land Use:"

(a) Are state agency's rules and programs (hereafter

1 referred to as "land use programs") which are:

2 (A) Specifically referenced in the statewide planning
3 goals; or

4 (B) Reasonably expected to have significant effects on:

5 (i) Resources, objectives or areas identified in the
6 statewide planning goals, or

7 (ii) Present or future land uses identified in acknowledged
8 comprehensive plans.

9 (b) Do not include state agency rules and programs,
10 including any specific activities or functions which occur under
11 the rules and programs listed in paragraph (2)(a)(A) above, if:

12 (A) An applicable statute, constitutional provision or
13 appellate court decision expressly exempts the requirement of
14 compliance with the statewide goals and compatibility with
15 acknowledged comprehensive plans; or

16 (B) The rule, program, or activity is not reasonably
17 expected to have a significant effect on:

18 (i) Resources, objectives or areas identified in the
19 statewide goals; or

20 (ii) Present or future land uses identified in acknowledged
21 comprehensive plans; or

22 (C) A state agency transfers or acquires ownership or an
23 interest in real property without making any change in the use or
24 area of the property. Action concurrent with or subsequent to a
25 change of ownership that will affect land use or the area of the
26 property is subject to either the statewide goals or applicable

1 city or county land use regulations.

2 (c) A final determination of whether or not an agency rule
3 or program affects land use will be made by the Commission
4 pursuant to ORS 197.180 and OAR 660, Division 30.

5 (3) "Agency Coordination Program" is the submittal made by
6 a state agency to the Department pursuant to ORS 197.180(2)(a-d)
7 and OAR 660-30-060.

8 (4) "Certification" is an order issued by the Commission
9 which finds that a state agency's coordination program satisfies
10 the requirements of ORS 197.180(2)(a-d) and OAR 660, Division 30.

11 (5) "Compatibility with Comprehensive Plans" as used in
12 ORS 197.180 means that a state agency has taken actions pursuant
13 to OAR 660-30-070, including following procedures in its
14 coordination program where certified, and there are no remaining
15 land use conflicts between the adoption, amendment or
16 implementation of the agency's land use program and an
17 acknowledged comprehensive plan.

18 (6) "Compliance with the Goals" means that state agency
19 land use programs and actions must comply with the applicable
20 requirements of the statewide planning goals as provided in
21 OAR 660-30-065.

22 (7) "Agency Consistency with comprehensive plans" as used
23 in Statewide Goal 2 shall have the same meaning as the term
24 "compatibility" as provided in OAR 660-30-005(5) and 660-30-070.

25 (8) "Coordination" as used in ORS 197.015(5) means the
26 needs of all levels of government, semipublic and private

1 agencies and the citizens of the state of Oregon have been
2 considered and accommodated as much as possible.

3 (9) "Commission" means the state Land Conservation and
4 Development Commission.

5 (10) "Department" means the Department of Land Conservation
6 and Development.

7 (11) "Director" means the Director of Land Conservation and
8 Development.

9 (12) "Goals" means the mandatory statewide planning
10 standards adopted by the Commission pursuant to ORS 197.005 to
11 197.855.

12
13 Submittal of Agency Coordination Programs

14
15 660-30-045(1) Upon a request by the Commission pursuant to
16 a schedule developed by the Director, each state agency shall
17 submit a coordination program to the Department. The agency
18 shall provide the Department with seven (7) copies of its
19 coordination program unless the agency and the Director mutually
20 agree to a different number of copies. Copies of the program
21 shall be available for public review during regular business
22 hours at the Department's Salem office and the central office of
23 the submitting agency. Copies shall also be available during
24 scheduled business hours at the Department's field offices and
25 any regional offices of the submitting agency.

26 (2) Upon receipt of an agency coordination program, the

1 Director shall review the submittal to determine whether the
2 agency's request contains the information and documents required
3 by OAR 660-30-060.

4 (3) If the submittal is not complete, the Director shall,
5 in writing, request any additional documents or information
6 needed to make the submittal complete.

7 (4) The 90-day review period in ORS 197.180(3) shall
8 commence upon notification in writing by the Director that the
9 agency's submittal is complete.

10
11 Notice of Review of Agency Coordination Programs
12

13 660-30-050(1) After informing a state agency in writing
14 that its submittal is complete, the Director shall provide an
15 opportunity for interested persons to submit written comments and
16 objections to the Department regarding certification of the
17 agency's coordination program. The notice shall identify the
18 agency program to be reviewed, the time and places where the
19 agency's program may be inspected and the date by which comments
20 and objections must be received at the Department's Salem office.

21 (2) The length of the notice period shall be determined by
22 the Director based on the nature of the agency program being
23 reviewed, but shall be at least thirty (30) days.
24
25
26

1 Review of Agency Coordination Programs

2
3 660-30-055(1) An agency coordination program found to be
4 complete pursuant to OAR 660-30-045(4) shall be evaluated by the
5 Director. The results of this evaluation, including responses to
6 timely objections, together with a recommendation regarding
7 certification, shall be set forth in a written report.

8 (2) If the Director recommends that the agency's program be
9 certified, the Department shall mail copies of the Director's
10 report to the submitting agency, all commenters and objectors,
11 any person who in writing requests a copy, and the Commission.
12 The report shall be considered by the Commission at a date
13 determined by the Director in the following manner:

14 (a) The submitting agency or persons who have submitted
15 timely comments or objections as described in OAR 660-30-050
16 shall have twenty (20) days from the date of mailing of the
17 Director's report to file written exceptions to that report;

18 (b) The Director may comment to the Commission in writing
19 or orally regarding any materials, comments, objections or
20 exceptions submitted to the Commission concerning any agency
21 certification request;

22 (c) The Commission may allow any person who has filed a
23 timely written comment or objection as provided in OAR 660-30-050
24 to appear before the Commission within time limits established by
25 the Commission to present oral statements on the person's written
26 comments, objections or exceptions. The Commission shall not

1 consider any new or additional information or testimony that
2 could have been presented to the Director within the timelines
3 required by OAR 660-30-050 or by section (3) of this rule, but
4 was not;

5 (d) Following its review of the Director's report and such
6 additional comments and information provided under subsections
7 (2) (a-c) of this rule, the Commission shall adopt an order
8 which:

9 (A) Certifies the agency's coordination program; or

10 (B) Denies certification and identifies the needed
11 corrections and date by which the agency is to amend its program
12 and resubmit to the Department in the same manner as provided in
13 OAR 660-30-045; or

14 (C) Postpones final action on the agency's coordination
15 program to a future date as determined by the Commission; and

16 (e) Commission orders adopted under subsection (2)(d) of
17 this rule shall be provided to the affected state agency,
18 commenters, objectors, and other persons requesting a copy in
19 writing.

20 (3) If the Director finds, pursuant to ORS 197.180(3-5),
21 that the agency's program should not be certified, the Director
22 shall mail copies of a draft of the Director's report including
23 needed corrections to the submitting agency, to all commenters
24 and objectors and to any person who requests a copy in writing.
25 The submitting agency and those persons filing timely comments
26 and objections shall have twenty (20) days from the date of

1 mailing to file written exceptions to the draft of the Director's
2 report.

3 (4) The Director shall evaluate exceptions to the draft
4 filed within the the twenty (20) day period provided in section
5 (3) of this rule. In a timely manner following the exception
6 deadline, the Director shall in writing notify and provide
7 supporting documents as appropriate to the submitting agency, all
8 commenters, objectors, persons filing exceptions and any person
9 who requests a copy in writing that:

10 (a) The report is unchanged from the draft and the
11 Director's recommendation that the agency's coordination program
12 not be certified is now final; or

13 (b) The Director's recommendation that the agency's
14 coordination program not be certified is now final but the report
15 has been changed from the draft; or

16 (c) The Director's recommendation that the agency's program
17 not be certified has been referred, along with all supporting
18 documents and comments, objections and exceptions timely filed,
19 to the Commission for its review and action in the manner
20 provided by section (2) of this rule; or

21 (d) The Director's report has been changed to recommend
22 that the agency's coordination program be certified and the
23 report, along with all supporting documents and comments,
24 objections and exceptions timely filed have been referred to the
25 Commission for its review and action as provided by section (2)
26 of this rule.

1 (5) A state agency which disagrees with the Director's
2 finding and recommendation under (4)(a) or (b) of this rule may
3 request Commission review of the Director's report.

4 (6) Within the time period specified in the notice issued
5 under paragraph (2)(d)(B) or subsection (4)(a) or (b) of this
6 rule, but not greater than 90 days, the affected state agency
7 shall amend and resubmit its coordination program to the
8 Department. Resubmittal of a program by an agency shall be done
9 in the same manner as described in OAR 660-30-045.

10

11 Required Elements of an Agency Coordination Program

12

13 660-30-060(1) An agency coordination program must satisfy
14 the requirements specified in ORS 197.180(2)(a-d) and
15 OAR 660-30-060(2) and (3).

16 (2) The four required elements of a state agency
17 coordination program listed in ORS 197.180(2)(a-d) are as
18 follows:

19 (a) Agency rules and summaries of programs affecting land
20 use;

21 (b) A program of coordination pursuant to
22 ORS 197.040(2)(e);

23 (c) A program for coordination pursuant to
24 ORS 197.090(1)(b); and

25 (d) A program for cooperation with and technical assistance
26 to local governments.

1 (3) To satisfy the requirement under subsection 2(a) of
2 this rule, a state agency must complete the following:

3 (a) Submit copies of all agency rules and list and briefly
4 describe all agency programs authorized by law. Such description
5 may be satisfied by provision of agency budget narratives or
6 other similar explanatory information;

7 (b) Using the definitions in OAR 660-30-005(2), indicate
8 which of the agency's rules and programs are land use programs;

9 (c) For each land use program provide a copy or summary of
10 the applicable enabling statutes or constitutional authority,
11 complete copies of administrative rules and procedures and an
12 analysis of the relationship between the program and land use;

13 (d) Identify any agency land use programs subject to the
14 requirements and procedures of the Commission's state permit
15 compliance and compatibility rule, OAR 660, Division 31, as
16 described in OAR 660-30-090(2); and

17 (e) For rules and programs determined not to be agency land
18 use programs, the agency is not required to demonstrate
19 compliance with the statewide planning goals and compatibility
20 with acknowledged comprehensive plans. However, specific actions
21 undertaken in conjunction with such rules or programs may require
22 a local permit or approval.

23 (4) To satisfy the requirement under subsection (2)(b) of
24 this rule, a state agency must complete the following:

25 (a) Compile agency land use programs into the following
26 categories:

1 (A) Exempt Land Use Programs. In this category the agency
2 shall place any land use program for which there is an applicable
3 statute, constitutional provision or appellate court decision
4 which expressly exempts the agency from the requirements in
5 ORS 197.180 to be compatible with acknowledged comprehensive
6 plans, but does not exempt the program from compliance with the
7 statewide goals; and

8 (B) Compatible Land Use Programs. In this category the
9 agency shall place those remaining land use programs not listed
10 under paragraph 4(a)(A) of this rule;

11 (b) Adopt or amend agency rules to implement procedures for
12 assuring the agency's goal compliance described in OAR 660-30-065
13 for the land use programs listed under subsection (4)(a) of this
14 rule;

15 (c) Adopt or amend agency rules to implement procedures for
16 assuring the agency's compatibility with acknowledged
17 comprehensive plans, including the resolution of disputes, as
18 provided in OAR 660-30-070 for land use programs listed under
19 paragraph (4)(a)(B) of this rule;

20 (d) Rules and procedures adopted by the agency to satisfy
21 the requirements of goal compliance and plan compatibility must
22 also be designed to address new or amended agency land use
23 programs enacted subsequent to Commission certification pursuant
24 to OAR 660-30-075; and

25 (e) Agency procedures for assuring goal compliance and
26 comprehensive plan compatibility may be specific to individual

1 land use programs or may be established to apply to more than one
2 land use program where appropriate.

3 (5) To satisfy the requirements under subsection (2)(c) of
4 this rule, a state agency must complete the following:

5 (a) Describe the procedures it will utilize to coordinate
6 its land use programs with the Department and affected state and
7 federal agencies and special districts; and

8 (b) Designate a unit within the agency to be responsible
9 for the coordination of the agency's land use programs.

10 (6) To satisfy the requirement under subsection (2)(d) of
11 this rule, a state agency must provide all of the following:

12 (a) A description of the agency's program for cooperation
13 with and technical assistance to local governments. This
14 description shall identify how the agency will participate in and
15 coordinate with the local planning process (i.e., plan amendment,
16 periodic review and plan implementation) regarding implementation
17 of the agency's land use programs;

18 (b) A listing of the agency section(s) to contact for
19 obtaining cooperation and technical assistance;

20 (c) A description of the kinds of technical assistance,
21 information and other services available from the agency and the
22 process used to provide such assistance, information and services
23 to local government;

24 (d) A description of how the agency shall assure that new
25 or updated agency plans or programs mandated by state statute or
26 federal law enacted after acknowledgment of comprehensive plans

1 will be incorporated into these plans and how the agency will
2 participate in periodic review in accordance with ORS 197.640(3)
3 and OAR 660-19-055;

4 (e) A description, if applicable, of any special procedures
5 or programs to cooperate and provide technical assistance to
6 acknowledged coastal cities and counties recognized under the
7 state's coastal zone management program; and

8 (g) A description, if applicable, of agency procedures to
9 coordinate with other state agencies and local governments and
10 provide technical assistance to local governments on public
11 facility funding, local public facility plans, permit issuance
12 and economic development as required by ORS 197.712(2)(f) and
13 197.717(1) and (2).

14
15 Agency Compliance with the Statewide Planning Goals

16 660-30-065(1) A state agency shall adopt as part of its
17 coordination program under OAR 660-30-060 appropriate rules and
18 procedures as required under this rule to assure that the
19 agency's land use programs comply with the statewide planning
20 goals.

21 (2) Except as provided in section (3) of this rule, a state
22 agency shall comply with the statewide goals by assuring that its
23 land use program is compatible with the applicable acknowledged
24 comprehensive plan(s) as provided in OAR 660-30-070.

25 (3) A state agency shall adopt findings demonstrating
26 compliance with the statewide goals for an agency land use

1 program or action if one or more of the following situations
2 exists:

3 (a) An agency's program or action specifically relates to
4 or occurs in an area that is not subject to an acknowledged
5 comprehensive plan; or

6 (b) An agency takes an action that is not compatible with
7 an acknowledged comprehensive plan after exhausting efforts to be
8 compatible as described in OAR 660-30-070; or

9 (c) An acknowledged plan pursuant to OAR 660-30-070(2)(c)
10 does not contain either:

11 (A) requirements or conditions specifically applicable to
12 the agency's land use program or action thereunder; or

13 (B) general provisions, purposes, or objectives which would
14 be substantially affected by the agency's action; or

15 (d) A statewide goal or interpretive rule adopted by the
16 Commission under OAR Chapter 660 establishes a compliance
17 requirement directly applicable to the state agency or its land
18 use program; or

19 (e) An acknowledged comprehensive plan permits a use or
20 activity contained in or relating to the agency's land use
21 program contingent upon case-by-case goal findings by the agency;
22 or

23 (f) The agency's land use program or action is expressly
24 exempt by reason of applicable statute, constitutional provision
25 or appellate court decision from compatibility with acknowledged
26 comprehensive plans; or

1 (g) The agency carries out, in accordance with
2 OAR 660-30-085, specified goal compliance requirements on behalf
3 of certain applicable local governments.

4 (4) A state agency which is in one of the compliance
5 situations described in section (3) of this rule shall address
6 directly only those goals that have not otherwise been complied
7 with by the local government. To assist in identifying which
8 statewide goals may be directly applicable to the agency's land
9 use program, the agency may:

10 (a) Utilize its agency coordination program, where
11 certified;

12 (b) Consult directly with the affected local government;

13 (c) Request interpretive guidance from the Department; and

14 (d) Rely on any applicable goal interpretations for state
15 agencies adopted by the Commission under OAR Chapter 660.

16 (5) State agencies shall include the following elements in
17 their goal compliance procedures adopted under sections (1) and
18 (3) of this rule:

19 (a) Identification of the specific statewide goals which
20 are most likely to be addressed directly by the agency;

21 (b) Commitment to address directly other applicable goals
22 if requested or required; and

23 (c) Description of the most likely situations in which the
24 agency will address statewide goal requirements in addition to
25 any compatibility findings regarding the acknowledged
26 comprehensive plan.

1 Agency Compatibility with Acknowledged Comprehensive Plans

2
3 660-30-070(1) A state agency shall as part of its
4 coordination program under OAR 660-30-060 adopt appropriate rules
5 and procedures to assure that the agency's land use programs are
6 compatible with acknowledged comprehensive plans. Such
7 procedures also shall identify the steps the agency will utilize
8 to resolve any land use disputes between the agency and a local
9 government.

10 (2) An agency can achieve compatibility in several ways
11 depending upon the nature of its land use program and the
12 organization and specificity of the acknowledged comprehensive
13 plan in question. Each agency shall incorporate one or more of
14 the following approaches as appropriate into its own
15 compatibility procedures pursuant to section (4) of this rule.
16 An agency program or action is compatible when the agency:

17 (a) Receives land use approval from the local government
18 where the acknowledged comprehensive plan contains requirements
19 or conditions specifically applicable to the agency's land use
20 program or action thereunder; or

21 (b) Determines, based on the response to written notice
22 provided to local government, the results of meetings held
23 pursuant to OAR 660-30-070(4)(a) or other equivalent steps as
24 described in the agency's certified coordination program, that
25 the acknowledged comprehensive plan's general provisions will not
26 be substantially affected by the agency's program or action; or

1 (c) Determines based on the results of steps taken under
2 subsection (2)(b) of this rule, that the acknowledged
3 comprehensive plan contains no specific or general provisions
4 applicable to the agency's program or action. In this situation,
5 however, an agency shall comply with the statewide planning goals
6 as provided in OAR 660-30-065(3)(c); or

7 (d) Utilizes in conjunction with a local government, the
8 provisions of this division and the agency's coordination
9 program, where certified, to resolve a land use dispute involving
10 the agency's land use program or action and the acknowledged
11 comprehensive plan; or

12 (e) Issues a permit in accordance with the requirements of
13 OAR 660, Division 31.

14 (3) In carrying out the compatibility requirements of this
15 rule, a state agency is not compatible if it approves or
16 implements a land use program or action that is not allowed under
17 an acknowledged comprehensive plan. However, a state agency may
18 apply statutes and rules which the agency is required by law to
19 apply, to deny, condition or further restrict an action or
20 program, provided it applies those statutes and rules to the uses
21 planned for in the acknowledged comprehensive plan.

22 (4) Each state agency's compatibility procedures for
23 assuring compatibility with acknowledged comprehensive plan,
24 including the resolution of land use disputes, shall at a minimum
25 provide for the following actions:

1 (a) Meetings between the agency and the local government's
2 planning representatives to discuss ways to make the agency's
3 land use program or action compatible;

4 (b) Identification by the agency of alternative actions or
5 modifications to the agency's program or action;

6 (c) Application by the agency for the necessary local land
7 use approval, including any needed plan and land use regulation
8 amendments;

9 (d) Pursuit of appropriate appeal by the agency of a denial
10 of its request for local land use approval; and

11 (e) Request by the agency for the needed local land use
12 approval during periodic review (OAR 660, Division 19) or an
13 explanation by the agency why periodic review is not available or
14 sufficient to respond to the agency's request.

15 (5) A state agency, or a local government may request
16 informal LCDC mediation if the agency determines after pursuing
17 procedures as appropriate under section (4) of this rule that
18 there is a need to proceed with its proposed action or program
19 which would be incompatible with the acknowledged comprehensive
20 plan. LCDC mediation may proceed as mutually agreed by LCDC, the
21 affected state agency and the local government.

22 (6) If, after pursuing any of the procedures required by
23 section (4) of this rule that are appropriate under the
24 circumstances, an agency contends that its proposed program or
25 action would be compatible with an acknowledged comprehensive
26 plan, but the local government contends that the program or

1 action would not be compatible, the agency shall proceed as
2 provided in sections (7) through (12) of this rule.

3 (7) Each agency's compatibility procedure shall provide for
4 Commission compatibility determination as a means for resolving
5 disagreement between the agency and a local government regarding
6 compatibility of the agency's proposed land use program or action
7 with an acknowledged comprehensive plan.

8 (8) Commission compatibility determination shall only be
9 requested if the state agency and local government remain in
10 dispute after taking any steps in section (4) of this rule that
11 are appropriate under the circumstances.

12 (9) The Commission may commence a compatibility
13 determination upon written request from the chief official or
14 governing authority of the agency, the local government or both.
15 Compatibility determination shall include the following:

16 (a) The Commission may designate a hearings officer. The
17 hearings officer shall compile a written assessment of the
18 compatibility dispute. The assessment shall document the
19 positions of each party, including a summary of the background of
20 the dispute, identification of major issues and contentions and
21 any other facts relevant to the case. The hearings officer shall
22 conduct hearings as he or she determines are appropriate under
23 the circumstances to aid in preparation of the report on the
24 compatibility dispute;

25 (b) The hearings officer's report shall be provided to the
26 Commission, the affected state agency, the local government and

1 other persons who request a copy in writing;

2 (c) The Commission shall review the hearings officer's
3 report at a regular or special meeting after providing a
4 reasonable amount of time for review by the agency, the local
5 government and other persons wishing to examine the report.
6 Following any allowed testimony from the parties or other
7 interested persons, the Commission shall determine whether the
8 agency's proposed program or action is compatible with the
9 acknowledged comprehensive plan; and

10 (d) The Department shall prepare a written record of the
11 Commission's determination of compatibility. The record of the
12 Commission's compatibility determination together with supporting
13 findings and documents shall be provided to the state agency, the
14 local government and any person requesting a copy in writing.

15 (10) The Department shall provide notice of opportunity for
16 participation in and obtaining the results of all Commission
17 determinations of compatibility to those who request such notice
18 in writing.

19 (11) A compatibility determination shall have no final
20 effect unless the affected agency proceeds and adopts the
21 Commission's compatibility determination as its own. If the
22 compatibility determination adopted by the affected agency is not
23 the same as the Commission's determination under subsection
24 (9)(c) of this rule, the Commission's determination, findings and
25 record shall be included in the record of the agency's action.

1 (12) If the agency's proposed program or action would be
2 incompatible with the acknowledged comprehensive plan or the
3 agency elects not to proceed as provided in sections (7) through
4 (12) of this rule, the agency may pursue any of the following
5 options:

6 (a) Take no action; or

7 (b) Modify its proposal to the extent needed to achieve
8 compatibility with the acknowledged comprehensive plan.

9
10 Review of Amendments to Agency Rules and Programs
11

12 660-30-075(1) The purpose of this rule is to assure that
13 new agency rules and programs or amendments to existing land use
14 programs of certified state agencies comply with the requirements
15 of ORS 197.180 and OAR 660, Division 30. This rule shall not
16 apply to the adoption of temporary agency rules or programs.

17 (2) A notice from a certified agency shall provide
18 information sufficient to demonstrate that the proposed new or
19 amended rule or program is one of the following:

20 (a) Is not an agency land use program; or

21 (b) Is an agency land use program and is covered under the
22 agency's procedures pursuant to OAR 660-30-060(4)(d) for assuring
23 goal compliance and comprehensive plan compatibility for new or
24 amended agency land use programs; or

25 (c) Is an agency land use program but is not covered under
26 the agency's procedures under OAR 660-30-060(4)(d). An agency's

1 notice must explain how the agency shall assure goal compliance
2 and comprehensive plan compatibility for the proposed new or
3 amended land use program.

4 (3) Department review in response to a notice from a
5 certified agency under section (2) of this rule shall be as
6 follows:

7 (a) The agency shall submit to the Department, pursuant to
8 agency rule-making under ORS 183 or other applicable adoption
9 procedures, a written notice of the agency's pending action.
10 Such notice shall be received by the Department not less than 45
11 days before the agency's action is to occur and shall:

12 (A) Identify the specific date, time and location of
13 anticipated agency action;

14 (B) Describe the manner in which written and oral comment
15 on the proposed action can be submitted to the agency;

16 (C) Provide a copy or a description of the proposed new or
17 amended rule or program; and

18 (D) Describe how the proposed action addresses subsection
19 (2)(a), (b), or (c) of this rule, as appropriate;

20 (b) Upon receipt of a notice from an agency as described
21 under subsection (3)(a) of this rule, the Department shall review
22 the proposed action. In accordance with paragraph (3)(a)(A) of
23 this rule, the Department in writing may provide comments to the
24 agency that the proposed action either:

25 (A) Satisfies subsections (2)(a), (b), or (c) of this rule;

26 or

1 (B) Does not satisfy subsections (2)(a), (b), or (c) of
2 this rule until more information is provided by the agency or
3 until the proposed rule or program adequately incorporates the
4 Department's suggested revision or modification.

5 (4) An agency proposing to adopt a new or amended rule or
6 program under this rule shall provide written notice of the same
7 type given to the Department under subsection (3)(a) of this rule
8 to the following:

9 (a) Persons who in writing to the agency request notice
10 about proposed rule or program actions pursuant to this rule; and

11 (b) Local governments who rely upon the certified agency's
12 rule or program for compliance under OAR 660-30-085 and are
13 affected by the proposed action.

14 (5) Except as provided in section (6) of this rule, any
15 agency which does not receive any comment from the Director under
16 OAR 660-30-075(3)(b)(B) prior to taking its action, may deem that
17 the Department finds the new or amended rule or program to have
18 satisfied ORS 197.180 and OAR 660, Division 30. Such adopted
19 new or amended rules or programs need not be submitted for
20 certification review.

21 (6) If an agency adopts a new or amended rule or program
22 without supplying the information including any suggested
23 modifications identified pursuant to OAR 660-30-075(3)(b)(B), the
24 Department may require that the amended rule or program be
25 submitted for certification review in the same manner as provided
26 in OAR 660-30-045 through 660-30-055.

1 Agency Requirements to Assure Compliance with the State Goals and
2 Compatibility with Acknowledged Comprehensive Plans Prior to
3 Certification by the Commission.
4

5 660-30-080(1) Until an agency's rules and programs are
6 certified by the Commission, the agency shall make findings
7 pursuant to ORS 197.180(6) when adopting or amending its rules
8 and programs as to the applicability and application of the goals
9 or acknowledged comprehensive plans, as appropriate.

10 (2) Previous Commission approvals of agency coordination
11 programs remain effective until the Commission certifies agency
12 programs pursuant to ORS 197.180 and OAR 660, Division 30;
13 however, prior Commission approval shall not constitute
14 certification. Agencies may rely on existing coordination
15 programs as appropriate and may utilize applicable provisions of
16 OAR 660, Division 30, in developing interim procedures to address
17 ORS 197.180(6).
18

19 Local Government Reliance on State Agency Land Use Programs
20

21 660-30-085(1) As an alternative method for achieving
22 compliance, a local government may rely on a state agency land
23 use program for the purpose of meeting one or more statewide
24 goals or individual goal requirements.

25 (2) A local government's decision to rely on a certified
26 agency land use program after the effective date of the

1 amendments to this division must satisfy all of the following
2 conditions:

3 (a) The affected comprehensive plan must be acknowledged
4 and shall:

5 (A) Identify the specific goals or goal requirements the
6 local government wishes to comply with through reliance on the
7 certified agency's land use program;

8 (B) Identify through plan policy the particular certified
9 state agency land use program which will be relied on to comply
10 with the goal requirements listed in paragraph (2)(a)(A) of this
11 rule;

12 (C) Document in the plan that the Commission has expressly
13 certified the agency's land use program as sufficient to satisfy
14 the goal requirement(s) listed under paragraph (2)(a)(A) of this
15 rule without supplemental regulation by the affected local
16 government;

17 (D) Delete or otherwise remove any conflicting provisions
18 of the comprehensive plan and land use regulations which are
19 being replaced by reliance on the certified state agency's
20 program; and

21 (E) Adopt mandatory plan policies which commit the local
22 government to amend its acknowledged comprehensive plan as
23 necessary in the event that a future change or deletion of an
24 agency land use program no longer enables the local government to
25 continue to rely on the certified agency's program for compliance
26 with the goals. The local government shall take action under

1 this subsection upon written notification from the Department
2 following a determination made under OAR 660-30-075 that the
3 agency's program can no longer be relied upon for goal compliance
4 by the local government;

5 (b) In advance of making a formal request under subsection
6 (2)(c) of this rule, a local government shall notify in writing
7 the applicable state agency of its intent to rely on the agency's
8 land use program for compliance with the goals; and

9 (c) The local government shall incorporate the items
10 referenced under subsection (2)(a) of this rule into the
11 acknowledged comprehensive plan either through the post-
12 acknowledgment plan amendment procedure or through periodic
13 review as required by ORS 197.610-.650 and OAR 660, Divisions 18
14 and 19, respectively.

15 (3) A local government's decision to rely on an uncertified
16 agency land use program after the effective date of the
17 amendments to this division must satisfy all of the following
18 conditions:

19 (a) The affected comprehensive plan must be unacknowledged
20 for the geographic area which the local government intends the
21 agency's program to address;

22 (b) The comprehensive plan shall:

23 (A) Identify the specific goals or goal requirements the
24 local government wishes to comply with through reliance on the
25 uncertified agency's program;

26 (B) Identify through plan policy the particular uncertified

1 state agency program which will be relied on to comply with the
2 goal requirements listed in paragraph (3)(b)(A) of this rule;

3 (C) Contain adopted findings of fact and a statement of
4 reasons which demonstrate that the agency's program does comply
5 with the goal requirement(s) identified under paragraph (3)(b)(A)
6 of this rule and the agency's program is at least equivalent to
7 what the local government would otherwise provide to comply with
8 the goal(s);

9 (D) Delete or otherwise remove any conflicting provisions
10 of the comprehensive plan and land use regulations which are
11 being replaced by reliance on the uncertified state agency's
12 program; and

13 (E) Adopt mandatory plan policies which commit the local
14 government to amend its comprehensive plan as necessary in the
15 event that the local government is no longer able to rely on the
16 agency's program for compliance as a result of:

17 (i) A change or deletion of the agency's program prior to
18 certification by the Commission;

19 (ii) Certification of the agency's program pursuant to this
20 division; or

21 (iii) Receipt of written notice from the Department
22 following a determination under OAR 660-30-075 that the agency's
23 program can no longer be relied upon for goal compliance by local
24 government; and

25 (c) In advance of submitting its acknowledgment request to
26 the Commission for compliance as provided under section (3) of

1 this rule, a local government shall notify in writing the
2 applicable state agency of its intent to rely on the agency's
3 uncertified program for compliance with the goals.

4
5 Relationship Between OAR 660, Division 30 and OAR 660, Division 31
6

7 660-30-090(1) The purpose of OAR 660, Division 31 (entitled
8 "State Permit Compliance and Compatibility") pursuant to ORS
9 197.180(7), is to specify state agency responsibilities for goal
10 compliance and comprehensive plan compatibility for agency land
11 use programs which involve the issuance of state permits. For
12 certain permits, OAR 660, Division 31 also establishes a process
13 for a state agency to rely on a local government's determination
14 of goal compliance and comprehensive plan compatibility
15 obligation under ORS 197.180.

16 (2) A state agency in its agency coordination program,
17 pursuant to OAR 660-30-060(3)(d) shall provide the following:

18 (a) A list of the agency's Class A and B permits affecting
19 land use, including those permits listed in OAR 660-31-012;

20 (b) A description as required by OAR 660-31-026 of the
21 process the agency will use to assure that permit approvals are
22 in compliance with the goals and compatible with acknowledged
23 comprehensive plans; and

24 (c) Definitions, as appropriate, of the terms "substantial
25 modifications" or "intensification" as required by OAR 660-31-040
26 involving renewal permits.

1 Application

2

3 660-31-095(1) These amendments to OAR 660, Division 30
4 shall be effective upon state agencies and other affected persons
5 upon filing of the adopted amendments with the Secretary of
6 State.

7 (2) Any state agency coordination program certified by the
8 Commission prior to the effective date of these amendments shall
9 modify as necessary and submit to the Department in accordance
10 with 660-30-045(1) amendments to its coordination program to
11 address the revised requirements of OAR 660, Division 30.

12

13 JBK:kj

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